

United States
Circuit Court of Appeals
For the Ninth Circuit.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Appellant,

vs.

J. M. ADAMSON, L. D. STEPHENS, J. L.
STEPHENS, JOSEPH CRAIG and YOLO
WATER AND POWER COMPANY, a Cor-
poration,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Northern District of California,
Second Division.

Filed

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F. D. Monckton,

No. 2502

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Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States District Court for the Northern
District of California.*

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

J. M. ADAMSON, L. D. STEPHENS, J. L.
STEPHENS, JOSEPH CRAIG, and YOLO
WATER AND POWER COMPANY, a Cor-
poration,
Defendants.

Bill to Redeem.

Now comes the plaintiff above named, and com-
plains of the above-named defendants, and for cause
of action alleges:

I.

That the plaintiff is a corporation duly organized
and existing under and by virtue of the laws of the
State of Arizona.

II.

That the defendant Yolo Water and Power Com-
pany is a corporation duly organized and existing
under and by virtue of the laws of the State of Cali-
fornia.

III.

That the defendants J. M. Adamson, L. D. Ste-
phens, J. L. Stephens, and Joseph Craig are each and
all residents and citizens of the State of California.

IV.

That on the 30th day of November, 1908, Central

Counties Land Company, a corporation duly organized and then existing under and by virtue of the laws of the State of California, was the owner and in possession of, and was entitled to the possession of, all those certain lots, pieces or parcels of land situate, lying, and being in the County of Lake, State of California, described as follows, to wit: [1*]

The southwest quarter of the southwest quarter of section twenty-seven (27), the north half of the northwest quarter, and lot one (1) of section thirty-four (34), the northeast fractional quarter of section thirty-three (33), and one hundred fifty-six and sixty-seven hundredths (156.67) acres of swamp and overflowed land and contained in Swamp Land Survey Number twenty-three (23) of Napa County, situate in said section thirty-three (33), and more particularly described as follows, to wit:

Beginning at the meander post between section thirty-three (33) and section thirty-four (34) distant 35.00 chains south of the corner to sections twenty-eight (28), twenty-seven (27), thirty-three (33), and thirty-four (34), in township thirteen (13) north of range seven (7) west, Mount Diablo Meridian, thence south 8.43 chains to Cache Creek, thence up creek north 79 deg. west 10.50 chains, south 68 deg., west 4.00 chains, north 86 deg., west 6.00 chains, north 83½ deg., west 5.00 chains, south 34 deg., west 6.00 chains, north 84½ deg., west 12 chains, across a slough one (1) chain wide, south 65½ deg., west 8.50 chains, south 34½ deg., west 9.00 chains, north 74 deg., west 12.00 chains, north 12½ deg., east 27.00

*Page-number appearing at foot of page of original certified Record.

chains, north 31 deg., east 10.50 chains, south 84 deg., east 6.00 chains, north 82 deg., east 15.00 chains, north 55 deg., east 11.00 chains, north 9 deg., east 6.00 chains, north 4.30 chains, east 4.00 chains to meander post between sections twenty-eight (28) and thirty-three (33), distant 18.00 chains west of the corner of sections twenty-seven (27), twenty-eight (28), thirty-three (33) and thirty-four (34), thence along United States traverse line south $14\frac{3}{4}$ deg., west 20.00 chains, thence south $50\frac{1}{2}$ deg., east 10.30 chains, south 59 deg., east 7.60 chains to the point of beginning.

Saving and excepting therefrom a tract of thirteen (13) acres, more or less, conveyed by Jacob Bower to R. S. Floyd by deed dated the 16th day of April, 1874, and which said deed is duly of record in the office of the County Recorder of the said County of Lake, in Vol. 4 of Deeds, at page 572, and to which said record reference is hereby made for a particular description of the lands so saved and excepted herefrom, all of said lands being situate in township thirteen (13) north of range seven (7) west, M. D. M., the said lands being commonly known as the Jacob Bower Lakeside tract.

ALSO all that part of lot three (3) and lot four (4) of section thirty-four (34), township thirteen (13) north, range seven (7) west, M. D. B. & M., lying south of the County Road leading from Lower Lake to East Lake, lying north of the center of Cache Creek.

ALSO all of swamp land surveys numbered fifteen (15) and sixteen (16) of Napa County, containing

in all one hundred and twenty-nine (129) acres of land, more or less, and bounded on the north and east by the County Road, on the south by Cache Creek and Clear Lake, and on the west by land of J. Craig, said lands being commonly known as and called the "Adamson Ranch."

V.

That on said 30th day of November, 1908, the said Central Counties Land Company borrowed of and received from the [2] defendant L. D. Stephens the sum of twenty-one hundred (\$2100.00) dollars in cash, and the said defendant L. D. Stephens, on said 30th day of November, 1908, gave instructions to his agents at Sacramento, California, to pay to the Secretary of State of the State of California the sum of nine hundred (\$900.00) dollars, said amount being then due to the said State of California as the annual license tax in the following named corporations, viz.: Central Counties Land Company, California Industrial Company, Central California Power Company, Clear Lake Power and Irrigation Company, Highland Springs and Squaw Rock Toll Road Company, and Lake Boulevard Company. That said money was subsequently paid to the said Secretary of State of the State of California in payment of said annual license taxes of said corporations.

VI.

That, contemporaneously with the aforesaid transaction of November 30, 1908, and as a part and parcel thereof, and solely for the purpose of securing the repayment to the said L. D. Stephens of said amount of twenty-one hundred (\$2100.00) dollars so bor-

rowed and received from him by the said Central Counties Land Company, as aforesaid, and of the said sum of nine hundred (\$900.00) dollars so directed by him to be paid out as aforesaid, the said Central Counties Land Company made, executed and delivered unto the said defendant L. D. Stephens an instrument in writing, in form a deed, but intended as a mortgage, which said instrument was and is in words and figures as follows, to wit:

“THIS INDENTURE OF DEED made this 30th day of November, A. D. 1908, by and between Central Counties Land Company, a corporation, Grantor, and L. D. Stephens, of Yolo County, California, Grantee, WITNESSETH:

The said grantor for and in consideration of the sum of ten (\$10.00) dollars to it in hand paid, and other good and valuable considerations by it received, does hereby grant, bargain, sell, convey, remise, release, and quitclaim unto the said grantee all those certain lots, pieces and parcels [3] of land situate and being in the County of Lake, State of California, bounded and particularly described as follows, to wit:

The southwest quarter of the southwest quarter (SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$) of section twenty-seven (27), the north half of the northwest quarter (N. $\frac{1}{2}$ of NW. $\frac{1}{4}$), and lot one of section (34), the northeast fractional quarter of section thirty-three (33), and 156.67 acres of swamp and overflowed land contained in Swamp Land Survey No. 23 of Napa County, situate in said section thirty-three (33), and more particularly described as follows, to wit: BEGIN-

NING at the meander post between section thirty-three (33) and thirty-four (34), distant 35.00 chains south of the corner to sections twenty-eight (28), twenty-seven (27), thirty-three (33) and thirty-four (34) in township thirteen (13) north of range seven (7) west, Mount Diablo Meridian, thence south 8.43 chains to Cache Creek, thence up creek north 79 deg., west 10.50 chains, south 68 deg., west 4.00 chains, north 86 deg., west 6.00 chains, north $83\frac{1}{2}$ deg., west 5.00 chains, south 34 deg., west 6.00 chains, north $84\frac{1}{2}$ deg., west 12 chains across a slough 1.00 chains wide, south $65\frac{1}{2}$ deg., west 8.50 chains, south $34\frac{1}{2}$ deg., west 9.00 chains, north 74 deg., west 12.00 chains, north $12\frac{1}{2}$ deg., east 27.00 chains, north 31 deg., east 10.50 chains, south 84 deg., east 6.00 chains, north 82 deg., east 15.00 chains, north 55 deg., east 11.00 chains, north 9.00 deg., east 6.00 chains, north 4.30 chains, east 4.00 chains to meander post between sections twenty-eight (28) and thirty-three (33), distant 18.00 chains west of the corner of sections twenty-seven (27), twenty-eight (28), thirty-three (33) and thirty-four (34); thence along United States traverse line south $14\frac{3}{4}$ deg., west 20.00 chains, thence south $50\frac{1}{2}$ deg., east 10.30 chains, south 59 —, east 7.60 chains to the point of beginning, saving and excepting therefrom a tract of 13 acres, more or less, heretofore conveyed by Jacob Bower to R. S. Floyd by deed dated the 16th day of April, 1874, and which said deed is duly of record in the office of the County Recorder of the said County of Lake, in Vol. 4 of Deeds, at page 572, and to which said record reference is hereby made for a particular description

of the lands so saved and excepted herefrom, all of said lands being situate in township thirteen (13) north of range seven (7) west, M. D. M., and the lands hereby conveyed containing in the aggregate 362.71 acres and commonly known as the Jacob Bower lakeside tract.

ALSO all that part of lot three (3) and lot four (4) of section thirty-four (34), township thirteen (13) north, range seven (7) west, M. D. B. & M., lying south of the county road leading from Lower Lake to East Lake, lying north of the center of Cache Creek.

ALSO all of Swamp Land Surveys numbered fifteen (15) and sixteen (16) of Napa County, containing in all one hundred and twenty-nine (129) acres of land, more or less, and bounded on the north and east by the County Road, on the south by Cache Creek and Clear Lake, and on the west by land of J. Craig, and lands hereby conveyed being now commonly known as and called the Adamson Ranch.

TOGETHER with all and singular the tenements, hereditaments and improvements thereon or thereunto appertaining.

This deed of conveyance is made and executed and delivered in pursuance of a resolution of the Board of Directors of said corporation, grantor, duly passed and authorized at a meeting of said board regularly called and held, authorizing and directing the President and Secretary to make, execute and deliver this conveyance. [4]

IN WITNESS WHEREOF the said corporation, grantor, has caused this conveyance to be executed in

its name, for it and as its act and deed, by its President and Secretary hereunto duly authorized this day and date herein first above written.

CENTRAL COUNTIES LAND COMPANY,

By LED. F. WINCHELL,

President.

By EDWARD O. ALLEN,

[Seal]

Secretary.”

VII.

That the resolution of the Board of Directors of said Central Counties Land Company, authorizing and directing the President and Secretary of said corporation to make, execute and deliver the above and foregoing instrument (being the same resolution referred to in the said instrument) was and is in the words and figures following, to wit:

“BE IT RESOLVED by the Board of Directors of Central Counties Land Company, that the President and Secretary of this corporation be, and they are hereby, authorized and directed to make, execute, and deliver unto L. D. Stephens a deed of conveyance, in the usual form, of all that certain real estate lying and being situated in the County of Lake, in the State of California, which is described in a certain deed dated January 24th, 1907, executed by Yolo County Consolidated Water Company, a corporation, and which is recorded at page 353 of Volume 39 of Deeds, in the office of the County Recorder of Lake County, California, to which said deed, and said record thereof reference is here made, and by reference, the same is made a part of this Resolution.

“That said deed be executed for the nominal con-

sideration of ten dollars, and other good and valuable considerations, and that the said President and Secretary be, and they are hereby authorized, to enter into a written contract with the said L. D. Stephens, whereby this corporation shall have the right, at any time, within seven (7) months from and after the 30th day of November, A. D. 1908, to purchase said land from said Stephens at and for the sum or price of three thousand dollars, and an additional sum equal to interest thereon, at the rate of $8\frac{1}{2}\%$ per annum from said date until paid, and that time be made of the essence of said contract.”

VIII.

That the lands referred to in said resolution as described in the deed dated January 24th, 1907, executed by the Yolo County Consolidated Water Company, a corporation, and recorded at page 353 of Volume 39 of Deeds in the office of the County Recorder of Lake County, California, is the same property [5] described in the written instrument hereinabove set forth, and also described in paragraph IV of this Complaint.

That after the execution of the aforesaid instrument on said 30th day of November, 1908, the said L. D. Stephens, defendant herein, caused the said instrument, which is in form a deed, to be recorded in Volume — of Deeds, at page —, in the office of the County Recorder of Lake County, California.

IX.

That contemporaneously with the execution and delivery of the foregoing instrument, in form a deed, the said L. D. Stephens duly executed and delivered

to the said Central Counties Land Company, a defeasance in the words and figures following, to wit:

“THIS MEMORANDUM OF AGREEMENT made this 30th day of November, A. D. 1908, by and between L. D. STEPHENS, of Woodland, Yolo County, California, party of the first part, and CENTRAL COUNTIES LAND COMPANY, a corporation, party of the second part,

WITNESSETH:

“The said party of the *first*, *for* and in consideration of the sum of One (\$1.00) Dollar to him in hand paid, and other good and valuable considerations, hereby covenants, promises and agrees that he will by good and sufficient deed grant, bargain, sell and convey all of his right, title and interest, which he now holds, or which he may during the term of this contract hold, of, in and to that certain real estate, which was conveyed by a certain deed, executed by YOLO COUNTY CONSOLIDATED WATER COMPANY, a corporation, to CENTRAL COUNTIES LAND COMPANY, a corporation, dated the 24th day of January, 1907, and which deed is of record in the office of the County Recorder of Lake County, California, at page 353, in Volume 39 of the Record of Deeds, provided and upon the condition that the said party of the second part shall within seven (7) calendar months from and after the date hereof pay to the party of the first part the sum of Three Thousand (3000) Dollars, as the purchase price of said land, together with the sum equal to interest on the said Three Thousand (3000) Dollars from the date of this agreement until the time of

said payment; all in United States Gold Coin.

“Time is expressly made of the essence of this agreement.

“The party of the second part is not bound to purchase said land, but may do so upon the terms and conditions herein contained at its option, and if the party of the second part shall fail to pay the said purchase price within the time herein expressed and *according the* terms hereof, then this contract shall cease and determine and the party of the first part shall be under no obligation or liability to make any such conveyances, but the said land hereinbefore referred to [6] shall be *a* remain to party of the first part free and exempt from the rights, claims, and demands of the said party of the second part.

“It is distinctly understood that any conveyance made as aforesaid shall be subject to the trust deed heretofore executed by the Yolo County Consolidated Water Company to the Mercantile Trust Company of San Francisco to secure certain bonded indebtedness.

“IN WITNESS WHEREOF the party of the first part has hereunto subscribed his name and the party of the second part has caused these presents to be executed for it and in its name by its President and Secretary hereunto duly authorized by resolution, this 30th day of November, 1908.

L. D. STEPHENS.

CENTRAL COUNTIES LAND COMPANY,

By LED. F. WINCHELL,

President.

By EDWARD O. ALLEN,

[Corporate Seal]

Secretary.

X.

That at the time of the execution and delivery to defendant L. D. Stephens of the aforesaid instrument, intended as a mortgage, as aforesaid, the said Central Counties Land Company was in possession of the said premises hereinabove described, and, notwithstanding the execution and delivery of the said instrument, said Central Counties Land Company continued in the occupation and possession of the said premises until the forfeiture of its right to do business as a corporation on November 30, 1911, as hereinafter alleged. That from and after such forfeiture, the former directors of said Central Counties Land Company, and this plaintiff as their successor in interest, continued in the occupation and possession thereof by and through said tenant J. M. Adamson as hereinafter alleged.

That on the 30th day of November, 1911, the defendant J. M. Adamson was, and ever since the 15th day of November, 1907, has been, in possession of the above-described "Jacob Bower Lakeside Tract" as the tenant of said Central Counties Land Company under a lease from year to year, and on said 30th day of November, 1911, said defendant Adamson was, and ever since the 1st day of November, 1910, has been also in possession of the above described "Adamson Ranch" as the tenant of said [7] Central Counties Land Company under a lease from year to year. That the said defendant Adamson has at all times since the said 1st day of November, 1911, been in possession of both of the said ranches hereinabove

described, to wit, the Jacob Bower Lakeside Tract and the Adamson Ranch.

That on the 18th day of December, 1911, the said defendant L. D. Stephens made and executed a written instrument, wherein and whereby he purported to convey to the defendants J. L. Stephens and Joseph Craig all of the property first hereinabove described; that said instrument was thereafter recorded in the office of the County Recorder of Lake County, California; that at the time of receiving the said instrument so purporting to convey to them the property first hereinabove described from the said defendant L. D. Stephens, the said defendants J. L. Stephens and Joseph Craig well knew that the said defendant L. D. Stephens was not the owner of said property, and had actual knowledge of the aforesaid transaction between said defendant L. D. Stephens and said Central Counties Land Company, and that the said instrument, in form a deed as aforesaid, was in fact a mortgage, and said defendants J. L. Stephens and Joseph Craig well knew that the defendant J. M. Adamson was, on said date, in possession of the said premises as the tenant of said Central Counties Land Company.

That at the time of the said transaction the said defendant Joseph Craig was one of the directors of the said Central Counties Land Company, and had participated in the meeting of said Board of Directors of said Company whereat the execution of the said instrument to the defendant L. D. Stephens was authorized by the said Board of Directors of the said Central Counties Land Company, and well knew, and

had actual knowledge of the said transaction, and that the said instrument so executed as aforesaid by said Central Counties Land Company [8] to the defendant L. D. Stephens was and is a mortgage, and that the said defendant J. L. Stephens also knew, and had actual knowledge of, the said transaction, and that the said instrument so executed by said Central Counties Land Company to the defendant L. D. Stephens, as aforesaid was and is a mortgage.

XII.

That the defendant Yolo Water and Power Company, at all times since its incorporation, has had actual knowledge and notice of the said transaction, and of the fact that the said instrument so executed as aforesaid by said Central Counties Land Company to the defendant L. D. Stephens was and is a mortgage.

That thereafter, and notwithstanding the said actual knowledge and notice of said defendant Yolo Water and Power Company, as to the nature of the aforesaid instrument hereinabove set forth, purporting to convey the said property hereinabove described from said Central Counties Land Company to the defendant L. D. Stephens, said defendant Yolo Water and Power Company received from said defendants J. L. Stephens and Joseph Craig, and said defendants J. L. Stephens and Joseph Craig executed and delivered to said defendant Yolo Water and Power Company, an instrument in writing, in form a grant, bargain and sale deed, wherein and whereby said defendants J. L. Stephens and Joseph Craig

purport to convey unto said defendant Yolo Water and Power Company all the real property hereinabove described, so mortgaged as aforesaid by said Central Counties Land Company to the defendant L. D. Stephens. That said instrument was recorded on June 17th, 1912, in Volume 49 of Deeds, at page 69, of the records of Lake County, California.

XIII.

That the agreed annual rental of the said lands known as the Jacob Bower Lakeside Tract was \$200.00 per annum, and [9] said rental was paid down to the 15th day of November, 1911, that the agreed annual rental of the said lands known as the "Adamson Ranch" was \$125.00 per annum, and that the said agreed rental for said lands was paid down to the first day of November, 1911.

XIV.

That said Central Counties Land Company failed to pay its license taxes to the State of California, due in the year 1911, and pursuant to proceedings duly taken by said State of California, to that end, the right of said Central Counties Land Company to do business as a corporation became and was forfeited on the 30th day of November, 1911; that thereupon all of the former directors of said corporation became, under and by virtue of the provisions of the laws of the State of California Trustees of the corporation for the benefit of its creditors and stockholders.

XV.

That the defendant J. M. Adamson has at all times, as aforesaid been and still is in possession of

said property, but that said defendant Adamson has, since said Central Counties Land Company forfeited its charter as aforesaid, refused and neglected to pay the rental of said property to the Central Counties Land Company, or to its Trustees, and without the consent of the said Central Counties Land Company, or of its said Trustees, or of its or their successors, said defendant Adamson has, as plaintiff is informed and believes, and on such information and belief avers, attempted to attorn to the defendant Yolo Water and Power Company, and now claims to be in possession of said property as the tenant of the said defendant Yolo Water and Power Company.

That the said defendant Adamson claims to have paid, since his alleged attornment, some or all of the rentals for the said property, to the defendants, or to some of them. [10]

XVI.

That on said 30th day of November, 1911, Anson S. Blake, Leigh Sypher, Charles L. Pierce, R. W. Van Norden, and Joseph Craig were the duly elected, qualified and acting directors of the said Central Counties Land Company.

That the defendant Joseph Craig, ever since the date of the forfeiture of the charter of said Central Counties Land Company as aforesaid, has repudiated said trust, and has, in all things, acted in opposition to the interest of the said Central Counties Land Company, and adversely to it and in derogation of the trust which, as aforesaid, devolved upon him as a member of the Board of Directors of said defunct corporation.

XVII.

That by mesne conveyances from said Board of Trustees, all of the title to said real property hereinabove described has become and is now vested in the plaintiff, and plaintiff is the lawful owner thereof as successor in interest of the said Central Counties Land Company.

XVIII.

That the defendants herein have not, nor has any or either of them, accounted to plaintiff for the rentals received from said property, or for the value of the use and occupation thereof for the period from and since the said 30th day of November, 1911.

That an accounting as to the rents, issues and profits of the said property will be necessary to ascertain what amount, if any, of moneys is now due and owing to the defendants for and on account of the aforesaid loan, for the purpose of securing which the said mortgage was executed by the said Central Counties Land Company.

XIX.

That plaintiff has no knowledge or information as to whether or not the defendants, or whether or not any or either [11] of them is still the owner and holder of the aforesaid indebtedness which the said mortgage was executed to secure, and that a discovery will be necessary to ascertain the identity of the person or corporation to whom or to which payment should be in order to redeem the said property.

XX.

That the appointment of a Receiver to take charge of the said property and to collect the rentals there-

for pending this litigation is necessary in order to preserve the said property from waste and injury.

XXI.

That plaintiff is ready, able and willing to pay such sum as may be found, upon an accounting to be justly due and owing, for principal and interest, to the present owner or owners of the indebtedness which the aforesaid mortgage so executed by the Central Counties Land Company to the defendant L. D. Stephens was given to secure, and plaintiff hereby tenders payment of such amount as may be found to be justly due. [12]

XXII.

That plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law.

WHEREFORE, plaintiff prays that the aforesaid instrument dated the 30th day of November, 1908, and executed by said Central Counties Land Company to the said defendant L. D. Stephens be adjudged to be a mortgage; that the ownership of the said indebtedness, be ascertained and determined; that an account be taken of the rents, issues and profits of the said property, and that leave be granted to this plaintiff to redeem the said property upon paying to the owner and holder or the owners and holders of the said indebtedness the balance of the said indebtedness, if any, that may be found to be due and owing thereon.

That the said instrument, in form a deed, so executed by said Central Counties Land Company to the defendant L. D. Stephens and that the said instrument in form a deed, so executed by said defend-

ant L. D. Stephens to the defendants J. L. Stephens and Joseph Craig, and the said instrument, in form a deed so executed by the defendants J. L. Stephens and Joseph Craig to the defendant Yolo Water and Power Company, and the record of each of said instruments in the Lake County, California, records, be adjudged to be clouds on plaintiff's title, and be removed.

That a Receiver be appointed to take charge of the said property and to preserve the same from damage, waste or injury during this litigation; and for such other, further different or additional relief as may be meet in the premises and conformable to equity.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Attorneys for Plaintiff.

HARDING & MONROE,
Of Counsel. [13]

State of California,

City and County of San Francisco,—ss.

H. S. Elliot, being first duly sworn, deposes and says:

That he is an officer, to wit, the President of Power and Irrigation Company of Clear Lake, plaintiff in the above-entitled action, and makes this affidavit in its behalf.

That he has read the above and foregoing Bill to Redeem, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information

and belief, and as to those matters that he believes it to be true.

H. S. ELLIOT.

Subscribed and sworn to before me this 12th day
of June, 1913.

[Seal] ALICE SPENCER,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Jun. 12, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [14]

*In the United States District Court for the North-
ern District of California.*

No. 24.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

VS.

J. M. ADAMSON, L. D. STEPHENS, J. L.
STEPHENS, JOSEPH CRAIG, and YOLO
WATER AND POWER COMPANY, a Cor-
poration,

Defendants.

Motion to Dismiss Bill of Complaint.

NOW COME all of the defendants by their solicitors and move the above-named Court to dismiss the bill of complaint in the above-entitled action, on the following grounds:

I.

That it appears upon the face of said bill of com-

plaint that the above-entitled court has no jurisdiction of the subject-matter of said complaint.

II.

That it appears upon the face of said bill of complaint that the above-entitled court has no jurisdiction of the parties to said complaint.

III.

That the facts stated in said bill of complaint are not sufficient to constitute a valid cause of action in equity against said defendants, or either or any of them.

IV.

That it appears upon the face of said bill of complaint that the cause of action therein attempted to be set up is barred by the laches of plaintiff and its assignors.

WHEREFORE, the defendants pray that the said bill of [15] complaint may be dismissed.

A. E. SHAW,
BERT SCHLESINGER,
DENSON, COOLEY & DENSON,
MASTICK & PARTRIDGE,
THEODORE A. BELL,

Solicitors and of Counsel for Defendants.

Received a copy of the within this 2d day of January, 1914.

CHARLES S. WHEELER, and
JOHN F. BOWIE,

Attorneys for Complainant.

[Endorsed]: Filed Jan. 3, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [16]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 24—IN EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Plaintiff,

vs.

J. M. ADAMSON et al.,

Defendants.

Memorandum Decision on Motion to Dismiss.

CHARLES S. WHEELER and JOHN F.
BOWIE, Attorneys for Plaintiff.

A. E. SHAW, BERT SCHLESINGER, DEN-
SON, COOLEY & DENSON, THEO-
DORE A. BELL and MASTICK & PART-
RIDGE, Attorneys for Defendants.

The principles applicable here are similar to those applied in *Power and Irrigation Company of Clear Lake et al. vs. Capay Ditch Company et al.* (No. 14), and the motion to dismiss the bill must be granted.

It is so ordered.

March 10th, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Mar. 10, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 14—IN EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Plaintiff,

vs.

CAPAY DITCH COMPANY, a Corporation, YOLO
COUNTY CONSOLIDATED WATER COM-
PANY, a Corporation, YOLO WATER
AND POWER COMPANY, a Corporation,
J. M. ADAMSON, L. D. STEPHENS, and
JOSEPH CRAIG,

Defendants.

Opinion and Order Dismissing Bill.

CHARLES S. WHEELER and JOHN F.
BOWIE, Attorneys for Plaintiff.

A. E. SHAW, BERT SCHLESINGER, DEN-
SON, COOLEY & DENSON, THEO-
DORE A. BELL and MASTICK & PAR-
TRIDGE, Attorneys for Defendants.

The plaintiff is a corporation organized under the laws of the State of Arizona.

The complaint avers that the Central Counties Land Company, a corporation, organized under the laws of the State of California was on November 18th, 1907, the owner of certain lands in Lake County, and on that day borrowed from defendant Capay Ditch Company three several sums of money, \$5,625.00, \$8,320.75, and \$10,625.00, and executed

and delivered to said Ditch Company its three several promissory notes for the said amounts all payable on or before August 1st, 1908. That contemporaneously, and as a part of the same transaction, and solely for the purpose of securing the payment of said notes, the said Central Counties Land Company executed and delivered to said Ditch Company an instrument in writing, in form a grant, bargain and [18] sale deed, but intended as a mortgage, conveying to said Ditch Company the said lands in Lake County; that on December 18th, 1911, the said Ditch Company conveyed said lands to defendant Yolo County Consolidated Water Company, which company thereafter conveyed the said lands to defendants L. D. Stephens and Joseph Craig, who in turn conveyed the same to defendant Yolo Water and Power Company, and that each and all of the defendants named took said conveyances with full knowledge of the real nature of the original deed from the Central Counties Land Company to the Capay Ditch Company; that plaintiff is the successor in interest of said Central Counties Land Company, and all of the title to said lands has by mesne conveyances become and is now vested in plaintiff, and that all of the demands of said Central Counties Land Company against the defendants have been transferred to plaintiff. This action seeks to have the deed to the Capay Ditch Company adjudged a mortgage, and that leave be granted plaintiff to redeem said lands by paying whatever is found to be due to such of the defendants as may be entitled to it. Possession of the lands is also sought,

as well as an accounting of the rents, issues and profits thereof. It is further asked that a receiver be appointed to take charge of said lands and preserve the same, and that defendant Yolo Water and Power Company be enjoined from doing certain contemplated work thereon. A number of other averments of the complaint are omitted from this statement because they have no bearing upon the question to be determined at this time. This question arises upon a motion to dismiss the bill upon several grounds, the one chiefly insisted upon being that the court is without jurisdiction because the suit is one upon a chose in action and as the Central Counties Land Company, because a citizen of this State, could not maintain the action [19] in this court, neither can plaintiff, its successor, do so, although a citizen of another State. This brings up for consideration the following provisions of Section 24 of the Judicial Code:

“No District Court shall have cognizance of any suit * * * * to recover upon any promissory note or other chose in action in favor of any assignee, * * * * unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made.”

It is strongly urged that this is not a suit upon a chose in action but is a suit to quiet title. However the action may be denominated, it seems quite clear to me that what is sought here is the enforcement of the original contract between the Central Counties Land Company and the Capay Ditch Company, and

the rights asserted are based wholly thereon.

The Court is asked to declare the instrument, in form a deed, to be a mortgage, and to do this because the parties agreed that it was such. If it were not for this agreement plaintiff would have no cause of action against defendants. This agreement is a chose in action, and this suit being to recover upon it, falls within the terms of Section 24 above quoted, and cannot be maintained.

The motion to dismiss will, therefore, be granted.

March 10th, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Mar. 10, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [20]

At a stated term, to wit, the March term, A. D. 1914, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom, in the City and County of San Francisco, on Tuesday, the 10th day of March, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable MAURICE T. DOOLING, District Judge.

EQUITY—24.

POWER & IRRIGATION CO. OF CLEAR LAKE,

vs.

J. M. ADAMSON et al.

Order Granting Defendants' Motion to Dismiss Bill.

Defendants' motion to dismiss the bill, heretofore

heard and submitted, being now fully considered and the Court having filed its opinion thereon, it was ordered that said motion be and the same is hereby granted. [21]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 24—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

J. M. ADAMSON, L. D. STEPHENS et al.,
Defendants.

Decree.

THIS matter came on to be heard on the 24th day of January, 1914, upon a motion made by the defendants to dismiss plaintiff's bill of complaint upon the ground that the above-entitled court is without jurisdiction to hear and determine the said cause; thereupon the said motion was argued by counsel for the respective parties, and submitted to the Court for its decision, and all and singular, the premises having been duly considered by the Court and it appearing that the said Court is without jurisdiction to hear and determine the said cause,—

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the said bill of complaint and the said cause be and the same are hereby dismissed, and

that said defendants recover their costs herein, taxed at the sum of \$3.70.

M. T. DOOLING,
Judge of said Court.

[Endorsed]: Filed and entered March 24, 1914.
Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [22]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 24.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

J. M. ADAMSON, L. D. STEPHENS, J. L. STEPHENS,
JOSEPH CRAIG, and YOLO WATER
AND POWER COMPANY, a Corporation,
Defendants.

**Petition for Order Allowing Appeal and Order
Allowing Appeal.**

To the Honorable Court Above Entitled:

The above-named plaintiff, Power and Irrigation Company of Clear Lake, a corporation, considering itself aggrieved by the decree made and entered in the above-entitled Court on the 24th day of March, 1914, in the above-entitled cause, hereby appeals therefrom to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, for the reasons and upon the grounds specified in its Assign-

ment of Errors filed herewith, and prays that this appeal may be allowed; and that a transcript of the record, proceedings, and papers upon which said decree was made and entered as aforesaid, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, sitting at San Francisco, California.

And your petitioner further prays that the proper order touching the security to be required of it to perfect its said appeal, be made.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Plaintiff. [23]

Order Allowing Appeal [and Fixing Amount of Bond].

The foregoing Petition for Appeal is hereby granted, and the appeal is allowed, upon the petitioner filing a bond in the sum of Three Hundred Dollars (\$300.00), to be conditioned as required by law.

Dated September 23, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Sept, 23d, 1914. Walter B. Maling, Clerk. [24]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 24—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Plaintiff,

vs.

J. M. ADAMSON, L. D. STEPHENS, J. L. STEPHENS,
JOSEPH CRAIG, and YOLO
WATER AND POWER COMPANY, a Corporation,

Defendants.

Assignment of Errors on Appeal.

Now comes the plaintiff in the above-entitled action by its attorneys, Charles S. Wheeler and John F. Bowie, and avers that the decree entered in the above-entitled cause on the 24th day of March, 1914, is erroneous and unjust to the plaintiff, and files with its petition for an appeal from the said decree, the following Assignment of Errors, and specifies that the decree is erroneous in each and every of the following particulars, viz.:

1. The said District Court of the United States for the Northern District of California was not without jurisdiction to hear and determine the said cause, and the order, judgment and decree of said Court dismissing said bill for want of jurisdiction is therefore erroneous.

2. The said Court erred in holding that section 24 of the Judicial Code deprived it of jurisdiction in the above-entitled action, for as much as the provisions of said section 24 are not applicable to the case at bar.

3. The said Court erred in holding that plaintiff's cause of action is based upon a chose in action within the meaning [25] of that phrase as used in section 24 of the Judicial Code, forasmuch as plaintiff's cause of action is not based on a chose in action within the meaning of the phrase as used in section 24 of the Judicial Code, but is an action to remove a cloud from a title and to redeem from a mortgage.

4. The Court erred in holding that plaintiff is the assignee of a mere chose in action as regards the lands described in the bill, forasmuch as the title to the lands in question is shown by said bill to be presently vested in the plaintiff.

5. The Court erred in holding that the bill seeks the enforcement of the original contract between the Central Counties Land Company and L. D. Stephens, forasmuch as such is not the gravamen of plaintiff's cause of action.

6. The Court erred in holding that the rights asserted in the action are based wholly upon the original contract between the Central Counties Land Company and L. D. Stephens; whereas, the fact is, that the rights and equities relied on in the bill arise out of the circumstance that by mandate of express law no title passed under the indenture set forth in the bill.

WHEREFORE, the plaintiff prays that the said decree be corrected or reversed, and the District Court directed to deny said Motion to Dismiss, or that such other relief be awarded as the nature of the case demands.

CHARLES S. WHEELER, and
JOHN F. BOWIE,

Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 23d, 1914. Walter B. Maling, Clerk. [26]

*In the District Court of the United States for the
Northern District of California, Second Di-
vision.*

No. 24—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

J. M. ADAMSON, L. D. STEPHENS, J. L. STE-
PHENS, JOSEPH CRAIG, and YOLO
WATER AND POWER COMPANY, a Cor-
poration,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
That we, Power and Irrigation Company of Clear
Lake, as principal, and PACIFIC COAST CASU-
ALTY CO., as surety, of the City and County of San
Francisco, State of California, are held firmly bound
unto J. M. Adamson, L. D. Stephens, J. L. Stephens,

Joseph Craig, and Yolo Water and Power Company, a corporation, in the sum of Three Hundred (\$300.00) Dollars, lawful money of the United States, to be paid to them and their respective executors, administrators, and successors and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our successors and assigns, by these presents.

Sealed with our seals and dated this 23d day of September, 1914.

WHEREAS, the above-named Power and Irrigation Company of Clear Lake has obtained an appeal to the Circuit Court of Appeals of the United States to correct or reverse the decree. [27] of the District Court for the Ninth District of California, in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Power and Irrigation Company of Clear Lake shall prosecute its said appeal to effect and answer all costs if it fails to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

POWER AND IRRIGATION COMPANY
OF CLEAR LAKE.

By H. S. ELLIOTT,
President.

[Seal Power and Irrigation Co.]

By R. H. BORLAND,
Secretary.

PACIFIC COAST CASUALTY COMPANY,

By R. W. STEWART,
Attorney in Fact.

[Seal Pacific Coast Casualty Company.]

Approved September 23d, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Sept. 23d, 1914. Walter B. Maling, Clerk. [28]

*In the United States District Court for the Northern
District of California, Second Division.*

EQUITY—No. 24.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

J. M. ADAMSON, L. D. STEPHENS, J. L. STE-
PHENS, JOSEPH CRAIG, and YOLO
WATER AND POWER COMPANY, a Cor-
poration,

Defendants.

Praeceptum for Transcript on Appeal.

To the Clerk of Said Court:

Sir: Please make up, print, and issue in the above-entitled cause a certified transcript of the record, upon an appeal allowed in this cause, to the Circuit Court of Appeals of the United States for the Ninth Circuit, sitting at San Francisco, California, the said transcript to include the following:

Bill to Redeem;

Motion to Dismiss Bill of Complaint;

Notice of Hearing Motion to Dismiss Bill of Com-
plaint;

Memorandum Decision;

Opinion of Court (Dooling, J.); in action No. 14,
Equity;

Minute Order of Tuesday, March 10, 1914;

Decree Dismissing Bill;

Petition for Allowance of Appeal, and Order En-
dorsed Thereon;

Assignment of Errors on Appeal;

Citation on Appeal;

Bond on Appeal;

Praeceptum for Transcript.

You will please transmit to the Circuit Court of Appeals, [29] with the record to be prepared as above, the Original Citation on Appeal.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Appellant.

Service and receipt of a copy of the within Praeceptum this 23d day of September, 1914, is hereby admitted.

MASTICK & PARTRIDGE,
A. E. SHAW,
BERT SCHLESINGER,
DENSON, COOLEY & DENSON,
Attorneys for Defendants.

[Endorsed]: Filed Sep. 23, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [30]

*In the District Court of the United States, in and
for the Northern District of California.*

No. 24—EQUITY.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,

Plaintiff,

vs.

J. M. ADAMSON, L. D. STEPHENS, J. L. STE-
PHENS, JOSEPH CRAIG, and YOLO
WATER AND POWER COMPANY, a Cor-
poration,

Defendants.

Clerk's Certificate to Record on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing thirty (30) pages, numbered from 1 to 30 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$20.00; that said amount was paid by Charles S. Wheeler and John F. Bowie, Esqs., attorneys for plaintiff; and that the original Citation issued in said cause is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 21st day of October, A. D. 1914.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk. [31]

*In the United States Circuit Court of Appeals for
the Ninth Judicial Circuit.*

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff and Appellant,
vs.

J. M. ADAMSON, L. D. STEPHENS, J. L. STEPHENS,
JOSEPH CRAIG, and YOLO
WATER AND POWER COMPANY, a Corporation,

Defendants and Appellees.

Citation on Appeal [Original].

United States of America,—ss.

The President of the United States, to J. M. Adamson, L. D. Stephens, J. L. Stephens, Joseph Craig, and Yolo Water and Power Company, a Corporation, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 22 day of October, 1914, being within thirty days from the date hereof, pursuant to an order allowing an appeal,

of record in the clerk's office of the District Court of the United States for the Northern District of California, in the suit numbered 24, in the records of said court, wherein Power and Irrigation Company of Clear Lake, a corporation, is plaintiff and appellant, and you and each of you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said plaintiff and appellant, as in said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States [32] District Judge for the Northern District of California, this 23 day of September, 1914.

M. T. DOOLING. [33]

Service and receipt of a copy of the within Citation, this 23d day of September, 1914, is hereby admitted.

MASTICK & PARTRIDGE,
A. E. SHAW,
BERT SCHLESINGER,
DENSON, COOLEY & DENSON,
Attorneys for Defendants.

[Endorsed]: No. 24. In the United States Circuit Court of Appeals for the Ninth Circuit. Power and Irrigation Company of Clear Lake, a Corporation, Plaintiff and Appellant, vs. J. M. Adamson et al., Defendants and Appellees. Citation on Appeal. Filed Sep. 23, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2502. United States Circuit Court of Appeals for the Ninth Circuit. Power and Irrigation Company of Clear Lake, a Corporation, Appellant, vs. J. M. Adamson, L. D. Stephens, J. L. Stephens, Joseph Craig and Yolo Water and Power Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed October 21, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

